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Thursday, June 04, 2009

Exceeding authority under a castle law

Here's a good video lesson on the difference between legal defense of people within a dwelling and murder in a castle doctrine state. The narration by the announcer here is not clear: the unarmed (it turns out) robber goes down because the pharmacist (the defendant) has shot him in the head. The armed robber flees without firing a shot. The prosecution claims the unarmed robber then lay there unconscious, which is plausible given that the defendant turned his back on him. The prosecutor argues (correctly, if we accept the prosecution's version of the facts) that the first shot to the head was proper self-defense, whereas the later five shots (the video is sped up) were not justifiable self-defense. The defense argues that the injured robber was getting back up and thus, even though not brandishing a weapon (and as it turns out unarmed), could have posed a danger justifying the five shots that killed the injured robber. From seeing on the video the pharmacist turn his back on that robber I'm skeptical of the defense's version of the facts, but that's up to the jury.

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Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

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Note that calling the police immediately afterward, as here, is a very good idea -- not calling the police as soon is one safely can is a very bad idea, suggesting guilt -- but it probably won't be enough in this case to save this guy from some jail time.

Ignatius Piazza, a self-defense trainer, has a good collection of videos on this case. Local TV station KRMG has a version with the prosecutor narrating the surveillance video (a much better but obviously biased narration).

Not mentioned in these videos is that the armed robber who ran away was also and quite properly charged with murder -- what is called a *felony murder*, because he committed a felony that led to a death, even death caused by a victim of that felony as here.

Technically, all the Oklahoma statute does is shift from the defendant the burden of proving "a reasonable fear of imminent peril of death or great bodily harm" when killing somebody who has forcefully entered a dwelling or vehicle -- instead the prosecutor must prove that the fear was not reasonable. Here, the burden of proof does shift to the prosecutor, but, again assuming the facts are as he claims, he should be able to prove beyond reasonable doubt either that the pharmacist in fact had no such fear, or that any such fear of harm from an unconscious man was unreasonable.

Even assuming the injured robber had regained consciousness, a much better course of action would have been to have the women at the back of the store call the police and to hold the gun to the robber's head until the police arrived.

I strongly second Ignatius' advice that if you own a gun that you may one day have to use for self-defense, that you take a good training course. Military training is *not* sufficient for this and indeed may have led this pharmacist, a military veteran, astray. Military doctrine is a very different thing than the civilian law of self-defense and the castle doctrine. I do take issue with Ignatius' simplistic description of a supposed "universal" rule for when self-defense is justified. Some jurisdictions allow far more defense of self, others, and persons within dwellings or vehicles than he describes (especially castle doctrine and stand-your-ground states), and some allow less. If you are going to have a gun around for self-defense, you should learn the laws of your own state, province, or country and you should train yourself accordingly. The laws vary widely. If you aren't willing to learn the laws and train accordingly, as this pharmacist apparently failed to do, you shouldn't keep a gun. By using a gun against criminals you are, morally speaking, deputizing yourself as a law enforcer -- a very good thing, since the police usually can't get there in time to protect victims, but a status that comes with a moral responsibility to train yourself in how to legally use a gun. Self-defense and castle laws give you this authority; misusing these rights is what the prosecutor properly (again assuming his version of the facts) calls "exceeding authority" and thus murder. Note that under the recent *Heller* Second Amendment case, self-defense and defense of others is a primary justification for our right to own a gun in the first place in the U.S.

The castle doctrine under common law, as well as the quite related knock-and-announce rule for law enforcement, comes from Semayne's case: "That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose...if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing." Modern castle statutes, such as Oklahoma's, often also apply this doctrine to businesses and vehicles. The Wikipedia article on the U.S. castle doctrine has a list of states with stand-your-ground laws and castle laws, with links to the statutory texts.

By the way, political scientists who define governments as entities having a "monopoly of force" are idiots. I just thought I'd get in that shot of my own while I'm here.

Posted by Nick Szabo at 1:41 AM

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5 comments:

Brian Dunbar said...

Military training is not sufficient for this and indeed may have led this pharmacist, a military veteran, astray.

Ah - I'd wondered about that. None of the stories I'd read about this said anything about the pharmacist's background.

6:22 AM

Vladimir said...

In the video, it looks like the pharmacist effectively performed an extrajudicial execution on the spot. I don't think even the most extreme interpretation of the castle doctrine would allow that, so he'll most likely be convicted of murder (unless perhaps he plea-bargains it down to some sort of manslaughter). I'm puzzled as to what might have been going on in his head at that moment; I can hardly believe that he thought this would be legal.

On the other, I don't feel any sympathy for the robber. The prosecutor referring to him as a "16 year old child" is a disgusting example of media-whoring (I mean, you can get *married* legally at that age in all 50 U.S. states). If he had any decency, he'd just say that this was an illegal execution, period. I don't even see why he felt it necessary to recite this awful pice of cant.

12:58 PM

nick said...

Vladamir, given the totality of the video (especially the seeming nonchalance of the pharmacist in going for the second gun with his back turned to the injured robber), I think your characterization of it as an "extrajudicial execution" is probably correct. It is possible, however, that the defense may be correct that the defendant had regained consciousness and was getting up, out of the view of the camera, in which case it's a closer call. In any case, the jury will have much more information than we do. The position of the body, the testimony of the women in the store, etc. will bear on this.

As for the main motivation for the extrajudicial execution, it's probably the same as for judicial executions, namely deterrence against future robbers, albeit with the warped judgment of adrenalin and perhaps other factors at play. Perhaps the likelihood of the injured robber's gang taking revenge (I'm quite speculating here) is higher if he is just injured than if he is dead. None of these, of course, are legal justifications for killing. Warped judgment under adrenalin is one of the reasons we have rules of legal procedure which those keeping guns should learn, and why the legal system tries to leave deterrence of crime (as opposed to defense against imminent threats) to trained officials rather than individuals. (I would be remiss if I didn't add that RKBA does perform an important deterrence function -- it's just that it leads to all sorts of problems if we try to make deterrence separate from self-defense legal).

4:31 PM

Anonymous said...

As a legal matter, an extrajudicial execution is off limits. As a moral matter - if we consider morality as something not dependent on the law but rather the other way around (i.e. the law may be critiqued as moral or immoral), then it is not so clear whether an extrajudicial execution is immoral. We do, granted, have trials for a reason, but the reason is largely uncertainty about what happened, and that reason is increasingly being obviated in a world where such technology as video surveillance often gives much greater certainty about innocence and guilt than a trial ever could. With this video, the executed man is far more clearly guilty than many men who were convicted in a trial in the days before recording devices. If this extrajudicial execution is immoral on account of lingering uncertainty than by extension perhaps the vast majority of convictions prior to 20th century are equally immoral because of the greater uncertainty.

There is of course the question of whether a mere robbery merits execution. Legally, perhaps today it does not. But morally the answer is not so clear. The law has in recent centuries become much gentler than it once was and this development is not necessarily moral. Mere minor offenses did receive capital punishment, and it is not obvious that they do not still deserve it.

This comment is in no way to be taken as advocacy of vigilantism, since, to take an example, this vigilante may have destroyed his own life, and that is surely not something I would advocate.

12:24 PM

John R. Wright said...

I am a proponent of self-defense and the Second Amendment, yet I have lost a close family member, a grandson, to a so-called castle law self defense incident in Oklahoma. His death was almost certainly a murder because the killing happened five days before his court date as a prosecution witness (he had witnessed drug trafficking and a related murder). There were several other ominous indications that self-defense was NOT the issue. The castle doctrine has seemed like a good concept (on paper), but its extension to actual statutes that stress a "presumption of innocence," encourages and enables criminals, psychopaths and those who are just plain trigger happy. It is not wise to put legal vigilance aside. Enough of these ill-advised shootings and we'll lose our Second Amendment rights. See:

www.cliffs-of-cotter.com

8:46 AM

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